

REMARKS

Claim Status

Claims 28–32, 34–37, 40–44, 47–48, 58–60, and 64–66 are pending in the present application. No claims are amended herein. The enclosed claim listing is provided for the Examiner's convenience. No additional claims fee is believed to be due.

Rejection Under 35 U.S.C. § 103(a) Over Hashimoto in view of Mahgerefteh

Claims 28–32, 58, and 64–66 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,681,297 issued to Hashimoto et al. (hereinafter “Hashimoto”) in view of U.S. Patent No. 5,681,297 issued to Mahgerefteh et al. (hereinafter “Mahgerefteh”).

Independent claims 28 and 58 recite a responsive system including a sensor and an actuator. In addition, claims 28 and 58 recite that the responsive system is disposed within the diaper so as to be located between the backsheet and the wearer.

In support of the rejection of claims 28 and 58, the Office Action asserts that Hashimoto discloses the claimed responsive system by characterizing the sensor 109 and the nozzle 108b of Hashimoto as the claimed sensor and actuator. (See Office Action, Page 2). The Office Action acknowledges that the sensor 109 and the nozzle 108b of Hashimoto are not located between the diaper backsheet and the wearer. Nonetheless, the Office Action asserts that Mahgerefteh discloses responsive system located within a diaper, and that it would have been obvious to modify Hashimoto to have a responsive system located between the diaper backsheet and the wearer.

The asserted combination of Hashimoto and Mahgerefteh does not teach or suggest all of the claim limitations of Claims 28 and 58 and, therefore, does not establish a *prima facie* case of obviousness (see MPEP 2143.03). As acknowledged by the Office Action, the sensor 109 and the nozzle 108b of Hashimoto are not located between the diaper backsheet and the wearer. Mahgerefteh discloses a wetness indicator implanted in a diaper. However, Mahgerefteh does not disclose an actuator within a diaper, and therefore, does not disclose the claimed responsive system. Thus, the asserted

combination of Hashimoto and Mahgerefteh does not teach or suggest the responsive system of claims 28 and 58.

It is also respectfully submitted that the asserted combination of Hashimoto and Mahgerefteh is improper. “[A] patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art.” *KSR Int’l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1741 (2007). “[R]jections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). Here, in support of the claim rejections, the Office Action asserts that it would have been obvious to modify Hashimoto to include a responsive system (i.e. the sensor 109 and the nozzle 108b) within the diaper so as to result in a more cost effective system. (See Office Action, Page 3). However, the Office Action does not articulate how modifying Hashimoto to remove the nozzle the 108b and sensor 109 from the diaper cup to be relocated within a disposable diaper would result in a more cost effective system. It contrast to the Office Action’s reasoning, it would seem that modifying Hashimoto to include disposable diapers having the nozzle 108b and the sensor 109 disposed therein would actually add cost.

Further, as articulated in the Amendment of January 15, 2009 and repeated below, Hashimoto does not teach or suggest the diaper structure recited in claims 28 and 58 wherein compositions are stored within the diaper prior to the diaper being first used and prior to a first excretion of fecal waste by the wearer. Instead, Hashimoto discloses a diaper cup adapted to connect with a diaper, wherein the diaper cup is connected to external facilities (i.e. tanks and pumps), which deliver externally stored washing water and air to the diaper cup in order to wash excrement from the body of a wearer and to remove the waste from the diaper cup through a drain. In contrast to the language of independent claims 28 and 58, Hashimoto does not teach or suggest the claimed diaper structure that stores one or more compositions for enhancing the removability of fecal waste from skin of the wearer. In addition, the recitation of Mahgerefteh does correct the aforementioned deficiency of Hashimoto.

Thus, it is respectfully submitted that, for at least the reasons discussed above, claims 28 and 58 are patentable under 35 U.S.C. § 103(a) over Hashimoto in view of Mahgerefteh. Claims 29-32 and 64-66 depend from and include all the limitations of claim 28. As such, for at least the same reasons discussed above with reference to claim 28, claims 29-32 and 64-66 are also patentable under 35 U.S.C. § 103(a) over Hashimoto in view of Mahgerefteh.

It is also respectfully submitted that dependent claims 64-66 recite additional limitations that are not taught or suggested by the combination of Hashimoto and Mahgerefteh, and the Office Action fails to point out where Hashimoto and Mahgerefteh teaches or suggests these claim limitations. In particular, claim 64 recites "wherein the one or more compositions is joined to the diaper while the one or more compositions is being stored." (emphasis added). Claim 65 recites "the diaper further comprises a leg cuff, and the one or more compositions is attached to the leg cuff while the one or more compositions is being stored." (emphasis added). Further, claim 66 recites "the one or more compositions is attached to the topsheet while the one or more compositions is being stored." (emphasis added). Based on the discussion above, it is clear that the combination of Hashimoto and Mahgerefteh does not teach or suggest the claim limitations recited in claims 64-66.

Therefore, it is believed that claims 28-32, 58, and 64-66 are in form for allowance and such indication is respectfully requested.

Rejection Under 35 U.S.C. § 103(a) Over Hashimoto in view of Mahgerefteh and Jones

Claims 34-37, 40-44, 47, 48, 59, and 60 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Hashimoto in view of Mahgerefteh and further in view of U.S. Patent No. 5,482,714 issued to Jones et al. (hereinafter "Jones").

It is respectfully submitted that Jones does not correct the deficiencies of Hashimoto and Mahgerefteh discussed above. As such, independent claims 28 and 58 are patentable under 35 U.S.C. § 103(a) over Hashimoto in view of Mahgerefteh and further in view of Jones. Claims 34-37, 40-44, 47, and 48 depend from and include all the limitations of claim 28, and claims 59 and 60 depend from and include all the limitations

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of claim 58. Thus, for at least the same reasons discussed above with reference to claims 28 and 58, claims 34-37, 40-44, 47, 48, 59, and 60 are also patentable under 35 U.S.C. § 103(a) over Hashimoto in view of Mahgerefteh and in further view of Jones.

Therefore, it is believed that claims 34-37, 40-44, 47, 48, 59, and 60 are in form for allowance and such indication is respectfully requested.

Nonstatutory Double Patenting Rejection

In the Office Action, claims 28, 34, 42, 44, and 58 are rejected on the ground of nonstatutory obviousness-type double patenting. In particular, claims 28 and 58 are rejected as being unpatentable over claim 20 of U.S. Patent No. 6,093,869; claim 15 of U.S. Patent No. 6,186,991; and claim 11 of U.S. Patent No. 6,384,296. In addition, claims 28, 34, 42, 44, and 58 are rejected as being unpatentable over claims 1, 12, and 14 of U.S. Patent No. 6,395,955.


The present application and U.S. Patent Nos. 6,093,869; 6,186,991; 6,384,296; and 6,395,955 are commonly owned as evidenced by the assignments recorded at reel frame numbers 010200/0013; 011381/0466; 009504/0603; 009504/0806; 011233/0059; 011381/0316; and 010330/0482. Terminal disclaimers are filed herewith to overcome the nonstatutory obviousness double patenting rejections.

Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the claim rejections. Early and favorable action in the case is respectfully requested.

Respectfully submitted,

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